

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

VOLUME 9(C) of 9(C) OF 20

UNITED STATES OF AMERICA

EP:13-CR-0370-DG

v.

EL PASO, TEXAS

MARCO ANTONIO DELGADO

September 12, 2016

STATEMENT OF FACTS

THE HONORABLE DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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KATHLEEN A. SUPNET, CSR

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21
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23
24
25

CHRONOLOGICAL INDEX

VOLUME 9(C) OF 20

September 12, 2016	PAGE	VOL.
Announcements	3	9C
Court's Instructions to the Jury	3	9C
Opening Statement by Ms. Arreola	8	9C
Opening Statement by Ms. Franco	18	9C
Rule Invoked	21	9C
GOVERNMENT'S <u>WITNESS TESTIMONY</u>	<u>DIRECT</u>	<u>CROSS</u>
BRIAN CUNNINGHAM	24,39	35
JOSEPH KEVIN BEDDARD	42	
Court Reporter's Certification	92	9C
	<u>VOIR DIRE</u>	<u>PAGE</u>
	--	--

1 (Open court. Jury present.)

2 (Trial resumes at 2:18 p.m.)

3 THE COURT: Let the record reflect that all members of
4 the jury are present, the United States is present through its
5 assistant United State's attorneys, defendant and counsel are
6 present.

7 Ladies and gentlemen of the jury, I'll give you some
8 preliminary instructions before we begin our trial. Now that
9 you've been sworn, I'll give you these instructions that will
10 guide your participation in the trial. It will be your duty to
11 find from the evidence what the facts are. You and you alone
12 will be the judges of the facts. You will then have to apply
13 those facts to the law as I will give you. You must follow the
14 law whether you agree with it or not.

15 Nothing I may say or do during the course of the trial
16 is intended to indicate or should be taken by you as indicating
17 what your verdict should be. The evidence from which you find
18 the facts will consist of the testimony of witnesses, documents
19 and other items received into the record as exhibits and any
20 facts that the lawyers may agree to or stipulate to or that I
21 may instruct you to find.

22 Certain things are not evidence and must not be
23 considered by you. I will list them for you now. Statements
24 arguments and questions by lawyers are not evidence. Objections
25 to questions are not evidence. Lawyers have an obligation to

1 their clients to make objections when they believe evidence
2 being offered is improper under the Rules of Evidence. You
3 should not be influenced by the objection or by my ruling on it.
4 If the objection is sustained, ignore the question. And if
5 there was an answer before I ruled, ignore the answer. If it is
6 overruled, treat the answer like any other. If you were
7 instructed that some item of evidence is received for a limited
8 purpose only, you must follow that instruction. Testimony that
9 I have excluded or told you to disregard is not evidence and
10 must not be considered as evidence. Anything you may have seen,
11 heard or read outside the courtroom is not evidence and must be
12 disregarded. You are to decide the case solely upon the
13 evidence presented here in the courtroom.

14 In this case, the defendant is charged with three
15 counts of wire fraud in violation of Title 18, United States
16 Code Section 1343, seven counts of international money
17 laundering in violation of Title 18 United States Code Section
18 1956(a)(2)(B)(i), and nine counts of engaging in monetary
19 transactions with criminally derived property in violation of
20 Title 18 United States Code 1957.

21 I'll give you a detailed instruction on the law at the
22 end of the case and those instructions will control your
23 deliberations and decision, but in order to help you follow the
24 evidence, I'll now give a brief summary of the elements of the
25 offense that the government must prove beyond a reasonable doubt

1 to make its case.

2 As to the offense of wire fraud, the government must
3 prove beyond a reasonable doubt that the defendant engaged in a
4 scheme to defraud, that the defendant used or caused the use of
5 wire communications in furtherance of that scheme to defraud and
6 that the defendant acted with a specific intent to defraud.

7 As to the offense of international money laundering,
8 the government must prove beyond a reasonable doubt that the
9 defendant transmitted or transferred funds to a place in the
10 United States from a place outside the United States, that the
11 defendant knew that the funds involved the proceeds of unlawful
12 activity, and that the defendant knew the transmission or
13 transfer was designed to conceal or disguise the nature,
14 location, source, ownership or control of the proceeds of a
15 specified unlawful activity.

16 As to the offense of engaging in monetary transactions
17 with criminally derived property, the government must prove
18 beyond a reasonable doubt that property valued at more than
19 \$10,000, that was derived from a specified unlawful activity,
20 that the defendant knew that the property was derived from an
21 unlawful activity and that the defendant knowingly engaged in a
22 monetary transaction with that property.

23 Now, during the course of the trial, you should not
24 speak with any witnesses or with the defendant or with any of
25 the lawyers in the case. Do not speak to them about any subject

1 whatsoever. You may be unaware of the identity of every
2 witness, every person connected with this case, therefore in
3 order to avoid even the appearance of impropriety, do not engage
4 in any conversation with anyone in or about the courtroom or
5 courthouse. It is best that you remain in the jury room during
6 breaks in the trial and do not linger in the hall.

7 In addition, during the course of the trial, do not
8 talk about the trial with anyone else, not your family or your
9 friends or the people that you work with. Also, do not discuss
10 this case amongst yourselves with your fellow jurors, until you
11 have been instructed to return to the jury room to begin your
12 deliberations on the case. Otherwise, without realizing it, you
13 may start forming opinions before the trial is over. It is
14 important that you wait until all of the evidence is received
15 and you have heard my instructions on the rules of law before
16 you deliberate amongst yourselves.

17 You as jurors must decide this case based solely on
18 the evidence presented here within the four walls of this
19 courtroom. This means that during the trial, you must not
20 conduct any independent research about this case, the matters in
21 the case, the individuals or corporations involved in this case.
22 In other words, you should not consult dictionaries or reference
23 materials, search the Internet, websites, blogs or use any other
24 electronic tool to obtain information about this case or help
25 you decide this case. Please do not try to find out any

1 information from any source outside of what you hear, here in
2 the courtroom.

3 I'm sure that many of you use cell phones, the
4 Internet and other tools of technology. You also must not talk
5 to anyone at any time about this case or use these tools to
6 communicate electronically with anyone about the case. This
7 includes your family and friends.

8 You may not communicate with anyone about the case
9 through any means, including your cell phone, through e-mail,
10 Blackberry, iPhone, text messaging, Snapchat, Twitter, blog or
11 websites, Facebook, Google, Myspace, LinkedIn, YouTube or any
12 other social media, even if I have not specifically mentioned
13 that particular media. The point is, we don't want you talking
14 to anyone about the case. You'll have plenty of time to do that
15 once you are discharged as this jury.

16 And I expect you will inform me as soon as you become
17 aware of another juror's violation of these instructions. A
18 jury who violates these restrictions jeopardizes the fairness of
19 the proceedings and a mistrial could result from that activity,
20 which would require us to begin the entire trial process over
21 again. And I'll give you a road map to help you follow what
22 will happen over the entire course of this trial.

23 First, the government will make an opening statement,
24 which is simply an outline of what they understand the evidence
25 will be. Following that, the defendant's attorney has the

1 opportunity to make an opening statement, but doesn't have to.
2 They can reserve their opening statement until they put on their
3 evidence, if they do put on any evidence. Attorney evidence is
4 not evidence. They're not arguments. They're just a detail of
5 what they expect the testimony will be.

6 After the opening statements, the government will then
7 present its witnesses and counsel for defendant may
8 cross-examine those witnesses at the conclusion of the
9 government's direct examination.

10 Following the presentation of the government's case,
11 the defendant may, if he wishes to present witnesses on his
12 behalf, and once he does that, then he will -- when he concludes
13 their direct examination, will pass that witness to the
14 government, who will have an opportunity to cross-examination
15 that witness.

16 After all of the evidence is in, the attorneys will
17 present their closing arguments, where they summarize the
18 evidence to you and give you their interpretation of what that
19 evidence proved. And following that, I'll instruct you to
20 retire to the jury room where you will begin your deliberations.

21 With that, we will begin with opening statements.

22 Ms. Arreola?

23 OPENING STATEMENT BY THE GOVERNMENT

24 MS. ARREOLA: This case is about a corporate lawyer
25 who stole millions of dollars. That lawyer was the defendant

1 Marco Delgado.

2 In 2010, Delgado's client, a company called F.G.G.
3 Enterprises entered into a contract to supply power generators
4 to the Mexican government utility company, a company called
5 C.F.E. The contract was for \$121 million.

6 The payments under the contract were supposed to go to
7 F.G.G.'s Wells Fargo account right here in help. Instead, the
8 evidence will show that Delgado submitted a document to the
9 Mexican government directing that the monies instead be sent to
10 an offshore account in the Turks and Caicos Islands where
11 Delgado controlled the money.

12 C.F.E. paid \$32 million into the Turks & Caicos
13 account and Mr. Delgado went on a spending spree. He bought a
14 \$375,000 home in the Coronado Country Club. He bought a condo
15 at a ski resort. He spent over half-a-million-dollars
16 renovating a house in Mexico, and there were other expenses as
17 well which you will hear about in this trial. And that is one
18 of the reasons -- excuse me -- as a result of Delgado's schemes,
19 the contract between C.F.E. and F.G.G. fell apart and F.G.G.
20 never delivered the turbines to the Mexican government. And
21 this is one of the reasons we are here today.

22 But first, let me reintroduce the members of the
23 prosecution. At the government's trial table are Assistant
24 United States Attorneys Debra Kanof and Jose Luis Gonzalez,
25 Paralegal Amy Serrano and Department of Homeland Security

1 Special Agent Joshua Fry and Brian Cunningham. My name is Anna
2 Arreola. I'm an assistant United State's attorney. And my
3 colleagues and I will be presenting the government's case to
4 you. So, what will the evidence show?

5 In 2009, Mr. Delgado had a client, a company called
6 F.G.G. F.G.G. was owned by an electrical engineer named
7 Fernando Gireud. That year, 2009, Delgado helped Mr. Gireud win
8 a contract with the Mexican government's utility company to
9 supply power generators. That company in Mexico is called
10 C.F.E. And you'll hear that C.F.E. is owned by the Mexican
11 government and it supplies electricity throughout Mexico.
12 C.F.E., by the way, is short for La Comisión Federal de
13 Electricidad or the Federal Electric Commission.

14 Now, back in 2009, C.F.E. had plans to build a power
15 plant at a town in Mexico called Agua Prieta. In order to build
16 that power plant, C.F.E. needed power generators. You will hear
17 that power generators or power turbines are equipment that
18 generate electricity, the same electricity that you use at your
19 home to turn on a light or to charge a cell phone. So, in
20 October, 2009, Delgado helped F.G.G. win a contract with the
21 Mexico government to supply these power generators to C.F.E. and
22 the contract was for \$121 million.

23 Now F.G.G. was a new company and it didn't manufacture
24 power turbines. So where was F.G.G. going to get these power
25 turbines? The evidence will show that F.G.G. entered into a

1 subcontract with a large company called Mitsubishi Power Systems
2 America. F.G.G. agreed to purchase the power turbines from
3 Mitsubishi for about \$102 million.

4 Now, how was the \$121 million that F.G.G. was going to
5 get paid from C.F.E. going to get deposited to F.G.G.? Well,
6 the contract between the Mexican utility company C.F.E. and
7 F.G.G. contained a schedule of payments, five payments totalling
8 \$121 million.

9 The contract between the Mexican utility C.F.E. and
10 F.G.G. also contained a per -- division in the contract that
11 identified the specific bank account into which the payments
12 were supposed to be deposited. That bank account was at a Wells
13 Fargo here in El Paso and it was held in the name of F.G.G.

14 The evidence will show that Mr. Delgado repeatedly
15 asked F.G.G.'s owner, Mr. Gireud, for signatory authority on the
16 account. In other words, the authorization to draw money from
17 the account, but Mr. Gireud refused.

18 Now, the first payment that was due to F.G.G. from the
19 Mexico utility company was \$20 million and it was supposed to
20 arrive at F.G.G. account on or about March 8, 2010. But that
21 day came and went and \$20 million never arrived in the F.G.G.
22 account. Instead the evidence will show that the \$21 million
23 was paid into that Turks & Caicos' account without Mr. Gireud's
24 knowledge or permission.

25 The evidence will show that Mr. Delgado submitted a

1 one-paged letter to the C.F.E. directing that the monies be
2 deposited into this offshore account where Delgado controlled
3 the money. This bank account was held in the name of a law firm
4 Skippings and Rutley.

5 The evidence will show that Mr. Delgado was a client
6 of Skippings and Rutley, but that F.G.G. and F.G.G.'s owners
7 didn't know about Skippings and Rutley and had no relationship
8 with Skippings and Rutley.

9 After the first payment arrived in this Turks & Caicos
10 account, the \$20 million, Mr. Delgado didn't notify Mr. Gireud
11 that the payment had arrived. Instead, the evidence will show
12 that a few weeks after this payment arrived, he sent a copy of a
13 fake letter on C.F.E. letterhead to Mr. Gireud and Mitsubishi.

14 The letter indicated that C.F.E. was going to reduce
15 the amount of the first payment from \$20 million to \$15 million.
16 What Mr. Gireud and Mitsubishi didn't know was that F.G.G. --
17 excuse me -- C.F.E. had already made that first payment of
18 \$20 million into the account. C.F.E. wasn't reducing the amount
19 of the first payment from 15 -- from 20 to 15, because it had
20 already made the first payment.

21 During the course of this trial, you will see the bank
22 records for that Turks & Caicos account. And you will also see
23 the e-mail that Mr. Delgado sent to Mr. Gireud and Mitsubishi
24 indicating that C.F.E. was going to reduce the amount of the
25 first payment.

1 So, what did Mr. Delgado do with the money in the
2 Turks & Caicos account? The evidence will show that Mr. Delgado
3 diverted millions of dollars worth of the money and went on a
4 spending spree. He bought a house for three \$375,000 in the
5 Coronado Country Club here in El Paso. He bought a condo at a
6 ski resort. He spent over \$300,000 at Charlotte's Furniture in
7 El Paso. He spent \$250,000 to university to create a foundation
8 in his name. He also spent about half-a-million-dollars to
9 renovate his house in Mexico.

10 The evidence will also show that Delgado caused about
11 \$700,000 from the Turks and Caicos account to be sent to his
12 accountant here in El Paso. Her name is Linda Medlock. And
13 evidence will show that Delgado approached Ms. Medlock and said
14 he was busy traveling and tired of paying late fees, so he asked
15 her for help paying his bills. He asked her to create an
16 account to help him do that.

17 Well, on the day that he and his accountant were
18 supposed to meet at a Wells Fargo here in El Paso to set up the
19 account, the accountant showed up, but Mr. Delgado didn't. And
20 so the accountant went ahead and opened the account in her name
21 and the monies began to arrive from the Turks and Caicos
22 Islands.

23 The evidence will show that Mr. Delgado told his
24 accountant that this money coming from the Turks and Caicos
25 Islands was from a line of credit. In other words, it was money

1 that he was borrowing from the bank. The evidence will also
2 show that he repeatedly promised to put his name on the account,
3 but he never did. The evidence will show that Delgado used
4 money from this new account at Wells Fargo here in El Paso for
5 personal expenses like meals at the Coronado Country Club,
6 donating a pool at his new home and \$34,000 in a European
7 vacation. The evidence will show that like that Turks & Caicos
8 account, this new account at Wells Fargo was not in Delgado's
9 name even though he controlled the money.

10 What else did Mr. Delgado do with the money? Well,
11 the evidence will show that the first payment into the Turks &
12 Caicos account, about \$20 million, arrived in about March 9th,
13 2010. Now, Mr. Gireud and F.G.G. didn't know about the account
14 or have access to it and Mitsubishi didn't know about the
15 account either. And the evidence will show that Mr. Delgado
16 didn't tell Mitsubishi or F.G.G. about this deposit. Instead,
17 the evidence will show that a few weeks after that \$20 million
18 was deposited, Delgado sent an e-mail to Mr. Gireud and to a
19 Mitsubishi official, in which he claims he was trying to secure
20 the first payment. In the e-mail, Delgado told Mitsubishi that
21 C.F.E. would pay Mitsubishi directly even though the money was
22 already in the Turks & Caicos account. And he also told
23 Mr. Gireud that he would receive his fees directly from F.G.G.
24 after F.G.G. got paid. What Mitsubishi and F.G.G. didn't know
25 was that the money was already in the Turks & Caicos account.

1 On April 1st, Mr. Delgado sent about \$11 million to
2 Mitsubishi for the first payment on the equipment contract. The
3 evidence will show that Mitsubishi was actually owed several
4 million dollars more than that, about \$14.5 million for the
5 first payment on the equipment. And the evidence will show that
6 same day that he sent that payment to Mitsubishi, he also sent a
7 payment to F.G.G. of about \$2.1 million.

8 Now, Mr. Gireud didn't know that Delgado was sitting
9 on this money in the Turks & Caicos, so when he got the
10 disbursement, he paid some of the bills at F.G.G., including
11 some of the investors and including his attorney, Marco Delgado,
12 for his legal fees in the amount of \$620,000.

13 The evidence will show that after the money was
14 deposited into the Turks & Caicos account, the contract between
15 F.G.G. and C.F.E. fell apart. F.G.G. didn't have the money to
16 perform its obligations on the contract and it never delivered
17 the power turbines to the Mexican government, which had paid
18 \$32 million into the Turks & Caicos account.

19 Ladies and gentlemen, I mentioned earlier that there
20 was another reason that we are here today. Let me describe that
21 reason. Under F.G.G.'s contract with C.F.E., the contract in
22 which F.G.G. agreed to provide power generators to the Mexican
23 government, F.G.G. was required to obtain something called a
24 letter of credit. What is a letter of credit? Well, a letter
25 of credit is a letter from a bank that would basically guarantee

1 F.G.G.'s performance under the contract. So if, for example,
2 F.G.G. didn't deliver the equipment or the equipment wasn't
3 working, C.F.E. could demand reimbursement from the bank in
4 order to compensate it for its loss. In other words, the letter
5 of credit provided a guarantee or a fallback position to C.F.E.,
6 the Mexican utility, in the event that F.G.G. didn't do its job
7 correctly.

8 Now, under the contract F.G.G. was required to obtain
9 a \$20-million letter of credit, which meant a letter of credit
10 that provided insurance or a guarantee to C.F.E. for
11 \$20 million. And Mr. Delgado told Mr. Gireud, the owner of
12 F.G.G., that these letters of credit were going to be expensive
13 and cost millions of dollars. He also told Mr. Gireud not to
14 worry about it, that he would taken care of it.

15 The evidence will show, however, that Mr. Delgado
16 hadn't taken care of it. He never used the money from the Turks
17 & Caicos to buy the letters of credit. Instead, he signed an
18 agreement with the Mexican government in which he pledged
19 Mitsubishi's equipment as a substitute for the letters of
20 credit. In other words, if F.G.G. didn't do its job right under
21 the contract, Mitsubishi's equipment would be at risk. The
22 problem, ladies and gentlemen, and what the evidence will show,
23 is that Mr. Delgado didn't have Mitsubishi's permission to do
24 that.

25 The evidence will show that Delgado submitted a

1 one-page letter to C.F.E. that was -- had a signature for a
2 senior vice president at Mitsubishi, someone named John Adams.
3 The letter stated that Mitsubishi was authorization a pledge of
4 this equipment. But the evidence will show that John Adams
5 never signed the letter, never saw the letter, never approved
6 the letter. And the notary whose signature is on the letter,
7 the evidence will show that she never signed it either.

8 Now that I've stated what the evidence will show, let
9 me tell you a bit about where the evidence will come from.
10 You're going to hear from about 17 or so witness in this case.
11 You will here from, example, from Mr. Gireud, from John Adams
12 and from Mr. Delgado's former accountant, Linda Medlock. You
13 will see the letter that Delgado signed causing the monies to be
14 sent to that Turks & Caicos account. You will see the John
15 Adams letter and the pledge agreement that Mr. Delgado signed
16 pledging Mitsubishi's equipment, and you're also going to see
17 the financial records to show how the money was spent.

18 The evidence in this case is going to come in, in bits
19 and pieces, and I have tried in this opening to give you a
20 preview so that you can see how the evidence fits together. But
21 I can't possibly tell you about all of the evidence that you
22 will hear and see in this case, which is why the government asks
23 you to pay close attention to the evidence as it comes in
24 because you may not be able to evaluate all of its importance
25 until the end of this case. But at the end of this process,

1 once all of the proof is in, you will see how the proof fits
2 together.

3 The government asks you to do three things in this
4 trial: To pay close attention to the evidence, to apply the law
5 as instructed by Judge Guaderrama and finally to apply your
6 common sense as you assess the evidence, the same common sense
7 that you use in your everyday lives. And the government submits
8 that if you do all of that, you will reach the only conclusion
9 supported by the evidence, that the defendant, Marco Delgado, is
10 guilty of the offense as charged in the indictment.

11 THE COURT: Thank you, Ms. Arreola.

12 Ms. Franco?

13 MS. FRANCO: Thank you, Your Honor.

14 OPENING STATEMENT BY THE DEFENSE

15 MS. FRANCO: May it please the Court, counsel.

16 Good afternoon. I'm proudly here representing Marco
17 Delgado in this case. And what I would want for you to listen
18 to and pay very close attention to is the reason why the company
19 was formed; F.G.G. was Mr. Delgado was Mr. Gireud had an idea to
20 be able to provide to answer this bid that was up in Mexico for
21 C.F.E. for the turbines, and they had a contact with Mitsubishi
22 to be able to supply the equipment.

23 So, F.G.G. and Mitsubishi came up with a teaming
24 agreement that they would work together to try to secure this
25 bid in Mexico. The sole purpose for why F.G.G. was formed was

1 to enable Mr. Delgado to get the contract with C.F.E. so that
2 they could get this business.

3 The evidence is going to show that these turbines were
4 already in existence. Mitsubishi did not have to build them.
5 They were already in business. They were already in storage.
6 They were supposed to be supplied to a power plant somewhere
7 else and that company had defaulted on them, so they had them in
8 their warehouses. And Mr. Delgado and Mr. Gireud came up with a
9 memorandum of understanding that you're going to see in
10 evidence. And when you see this, you'll see that Mr. Gireud was
11 a managing partner of this limited liability corporation, but
12 Mr. Delgado was to get 62.5 percent of the profit of anything
13 that they -- the difference between what the Mexican government
14 was willing to pay for their turbines and what they could buy it
15 from Mitsubishi from. And also in that memorandum of
16 understanding, it's very clear that Mr. Delgado was supposed to
17 get paid first in the first disbursement.

18 And when you do the math, and I ask you to hang in
19 there while we work through all of this, because these are big
20 numbers, but it's going to show that the amount of money that
21 Mr. Delgado received was in relation to the amount of money that
22 the memorandum of understanding paid for.

23 Please remember what Ms. Arreola said. Mitsubishi did
24 get paid from the disbursements when Mr. Delgado did direct
25 payment and so did F.G.G.; they got paid as well. The

1 memorandum of understanding not only called for Mr. Delgado to
2 get 62.5 percent of the profits. It also reimbursed him for
3 over \$400,000 of his investment, his expenses that he put in to
4 make this deal happen.

5 On Mitsubishi, you are going to hear evidence that
6 there's a reason why Mr. Adams is saying that he didn't sign
7 that letter and so we'll get into that during his testimony, but
8 in any case, he did sign the letter. It was accepted by the
9 Mexican government and it was excepted in lieu of letters of
10 credit, because the machinery didn't have to already be made --
11 built. It was already built, so this wasn't starting from
12 scratch. The equipment was already there. And Mr. Delgado
13 properly registered that pledge. And the officials from Mexico
14 went to Japan and France, which is where the two turbines were,
15 to inspect them to make sure that they existed, and they
16 accepted the pledge in lieu of the letters of credit.

17 After you hear all of the evidence and you see the
18 memorandum of understanding, you see the special power of
19 attorney that Mr. Gireud signed with Mr. Delgado, which clearly
20 says that he is able to do and act in Mr. Gireud's place, that
21 he could move the bank account, he could change the bank
22 account, he could do whatever he want, because the power of
23 attorney that Mr. Gireud had signed allowed Mr. Delgado to do
24 that.

25 You are going to see the memorandum of understanding,

1 which talks about the fact that Mr. Gireud was supposed to pay
2 and establish an escrow account to ensure that Mr. Delgado was
3 paid timely in that first disbursement. And when he got
4 rebuffed several times is when Mr. Delgado ensured that his
5 interest in the profits were going to be protected and set up
6 the bank account.

7 Now, the government is going to bring, and they
8 already have evidence about all of the things that Mr. Delgado
9 purchased with the money, but remember, it was his money. So
10 the fact that he bought a house or he did this or he did that,
11 don't let that inflame and affect what is the right thing to do
12 in this case, which is to find Mr. Delgado not guilty as he had
13 every authority in the world to do what he do did in this case.

14 And the final thing I would like for you-all to know
15 is that those turbines, F.G.G. wasn't able to provide it, but
16 Mitsubishi did so, and those turbines are in Agua Prieta as we
17 speak.

18 Thank you, Your Honor.

19 THE COURT: Thank you, Ms. Franco.

20 Ms. Arreola, who is your first witness?

21 MS. FRANCO: Your Honor, we invoke the rule.

22 THE COURT: If you would bring all of the witnesses
23 that you have up here to the bar.

24 Ms. Franco, do you have any witnesses here?

25 MS. FRANCO: No, Your Honor.

1 THE COURT: Okay. I'll make it your obligation to
2 inform your witnesses of the rule.

3 MS. FRANCO: Yes, sir.

4 THE COURT: All right.

5 MS. KANOF: He's the only one coming.

6 THE COURT: Well, the rule isn't going to apply to
7 Agent Cunningham.

8 MS. KANOF: Right.

9 THE COURT: If you'd raise your right hand.

10 (Witnesses sworn by the Court.)

11 THE COURT: Thank you. State your name for the
12 record, beginning with you, Agent.

13 MR. CUNNINGHAM: Brian Cunningham.

14 THE COURT: And you, sir?

15 MR. BEDDARD: Joseph Beddard.

16 THE COURT: I'm sorry. Joseph?

17 MR. BEDDARD: Kevin Beddard, B-E-D-D-A-R-D.

18 THE COURT: All right. The rule has been invoked in
19 this case. That means once you exit the courtroom, you cannot
20 re-enter the courtroom unless you've been instructed to do so by
21 the Court or someone else at the Court's direction. You cannot
22 discuss your testimony with anyone other than the attorneys in
23 the case nor can you allow anyone else to discuss their
24 testimony or anyone else's testimony with you.

25 Do you understand the rule?

1 MR. BEDDARD: I do.

2 THE COURT: All right. The rule is punishable by
3 contempt, the violation of it.

4 Who's going to be your first witness?

5 MS. KANOF: Many of our witnesses are represented by
6 counsel. Is he permitted to discuss anything with his own
7 counsel?

8 THE COURT: Of course. Yeah.

9 MS. KANOF: Agent Cunningham is our first witness.

10 THE COURT: Sir, if you would remain outside. We'll
11 call you in.

12 MS. ARREOLA: Your Honor, the government requests
13 sidebar.

14 THE COURT: Yes, ma'am.

15 (Bench conference.)

16 MS. ARREOLA: Your Honor, at the hearing on Thursday,
17 we talked about the documents that we received pursuant to the
18 MLAT, and the government will be offering Government's
19 Exhibit 1, which are the documents from Turks and Caicos
20 Islands.

21 THE COURT: The foreign documents?

22 MS. ARREOLA: The foreign documents. Is there a
23 ruling?

24 THE COURT: What was your objection to those?

25 MR. HANSHEW: The *Crawford* objection with our motion

1 in limine.

2 THE COURT: That'll be overruled.

3 MS. ARREOLA: Okay. Thank you, Judge.

4 (Bench concluded.)

5 MS. ARREOLA: Your Honor, the government offers
6 Government's Exhibit 1, which are bank records received from the
7 Central Authority of the Turks and Caicos Islands, pursuant to
8 Mutual Legal Assistance Treaty between the United States and the
9 United Kingdom.

10 THE COURT: And is your objection to that previously
11 stated?

12 MR. HANSHEW: Yes, Your Honor.

13 THE COURT: That's your only objection?

14 MR. HANSHEW: Correct, Judge.

15 THE COURT: All right. That's overruled. GX-1 is
16 admitted.

17 MS. ARREOLA: Your Honor, the government calls Special
18 Agent Brian Cunningham.

19 THE COURT: All right. You may proceed.

20 BRIAN CUNNINGHAM,

21 DIRECT EXAMINATION BY THE GOVERNMENT

22 BY MS. ARREOLA:

23 Q. Would you state your name for the record?

24 A. My name is Brian Cunningham.

25 Q. How are you employed?

1 A. I'm a Special Agent with Homeland Security Investigations
2 here in El Paso, Texas.

3 Q. Are you assigned to any particular unit?

4 A. Yes, currently I'm in the National Security Investigations
5 group.

6 Q. Okay. Before being assigned to that National Security
7 Investigations group, what unit were you assigned to?

8 A. I was in financial one.

9 Q. And what types of cases do agents who are assigned to
10 financial one investigate?

11 A. Money laundering, structuring, fraud cases, and then you,
12 also, as the predicate offense, you wind up getting into drug
13 investigations, alien smuggling, things of that nature.

14 Q. I'm going to ask you to take a look at what is already in
15 evidence as Government's Exhibit 1 in the binder?

16 A. Yes, ma'am.

17 Q. Do you recognize these documents?

18 A. Yes, ma'am.

19 Q. What are they?

20 A. They are bank records from a Turks & Caicos bank account.

21 Q. Okay. And the Turks & Caicos are in the Caribbean?

22 A. Yes, ma'am.

23 Q. What is the name on the account?

24 A. It is Skippings and Rutley.

25 Q. Now, do the bank records that are in Government Exhibit 1,

1 do they show any credits into the account, in other words,
2 monies going into the account?

3 A. Yes, ma'am, they do.

4 Q. How many credits are reflected in the bank records?

5 A. Two.

6 Q. What are the amounts of those?

7 A. \$20 million and \$12 million.

8 Q. I'm going to ask you to turn to page 79 of Government
9 Exhibit 1.

10 MS. ARREOLA: And Your Honor, the government requests
11 it be published to the jury?

12 THE COURT: That's GX-1? Yes, ma'am.

13 THE WITNESS: Okay.

14 THE COURT: Maybe we can zoom in a little.

15 BY MS. ARREOLA:

16 Q. Can you read from the top of the page the type of
17 transaction that's reflected on this document?

18 A. Yes, ma'am. It says it's a wire transfer credit.

19 Q. Okay. And what is listed as the date of the transaction?

20 A. It's March 9th, 2010.

21 Q. And what is listed as the amount of the transaction?

22 A. It's \$20 million.

23 Q. Who is listed as the ordering customer?

24 A. It is Federic Commisso Costos Previous, C.F.E. Please
25 excuse my pronunciation.

1 Q. And what is listed as the remittance information?

2 A. It is to F.G.G. Enterprises, LLC.

3 Q. I'm going to ask you to turn to page 940.

4 Can you read from the top of the page, the type of
5 transaction reflected on this page?

6 A. Yes, ma'am. It is a wire transfer credit.

7 Q. And what is shown as the date.

8 A. It is July 6th, 2010.

9 Q. And what is listed as the branch?

10 A. It is International Corporate Banking, Turks & Caicos.

11 Q. What is listed as the amount of the transfer?

12 A. \$12 million.

13 Q. And who is listed as the ordering customer?

14 A. It is once again Federic Commisso Costos Previous, C.F.E.

15 Q. And what is listed as the remittance information?

16 A. It is F.G.G. Enterprises, LLC.

17 Q. Does the document, that is now in evidence as Government's
18 Exhibit 1, also include debits from the account, in other words,
19 monies being drawn from the account?

20 A. Yes, ma'am.

21 Q. I'm going to now ask you to take a look what has been
22 marked for identification purposes as Government's Exhibit 2.
23 Do you recognize it?

24 A. Yes, ma'am, I do.

25 Q. What is it?

1 A. It's a summary chart of the Turks & Caicos account.

2 Q. What information is summarized on what's been marked for
3 identification as Government Exhibit 2?

4 MR. HANSHEW: Your Honor, there's no authentication,
5 yet, as to where this chart came from --

6 (Court Reporter asks to repeat.)

7 MR. HANSHEW: There's no authentication as to his
8 knowledge of this document, Judge.

9 MS. KANOF: Your Honor, we're getting there. I'm just
10 laying the foundation.

11 THE COURT: Right. She's not offering it. She's just
12 laying the foundation.

13 A. I'm sorry. Could you repeat the question?

14 BY MS. ARREOLA:

15 Q. Yes. What information is summarized on this chart?

16 A. It summarizes the date of the transaction, whether it was a
17 credit to the account; if it was a credit to the account, who it
18 came from; and then four debits to the account meaning money
19 going out, the date of that transaction, who it was sent to and
20 any information that was referenced in that wire transfer and
21 then the amount of the wire transfers out of the account.

22 Q. Did you prepare what's been marked for identification
23 purposes as Government Exhibit 2?

24 A. No, ma'am, I did not.

25 Q. Did you verify the information that's regarded in this

1 exhibited?

2 A. Yes, ma'am, I did.

3 Q. How did you do that?

4 A. I reviewed the documents in Government's Exhibit 1, in
5 order to verify the transaction in this chart.

6 Q. Okay. Does the information -- does what's been marked as
7 Government Exhibit 2 fairly and accurately summarize the
8 information that's in Government Exhibit 1?

9 A. Yes, it does.

10 Q. Does this chart, what's been marked as Government Exhibit
11 2, does it contain any analysis?

12 A. No, ma'am.

13 MS. ARREOLA: Your Honor, the government offers what's
14 been marked for identification as Government Exhibit 2.

15 THE COURT: Mr. Hanshew?

16 MR. HANSHEW: No, objection Your Honor.

17 THE COURT: GX-2 is admitted.

18 MS. ARREOLA: May we publish, Your Honor?

19 THE COURT: Yes, ma'am.

20 MS. ARREOLA: Your Honor, may we also put these on an
21 easel?

22 THE COURT: Sure. Do you have an easel?

23 MS. ARREOLA: We're going to be setting that up, but I
24 am going to continue to ask questions.

25 THE COURT: Mr. Hanshew, if you need to leave your

1 seat so you can view the easel, you are welcome to do that.

2 MR. HANSHEW: I'm assuming it's going to be the same
3 thing, hopefully. Thank you, Judge.

4 BY MS. ARREOLA:

5 Q. Agent Cunningham, can you walk us through the different
6 columns on this chart?

7 A. Yes, ma'am. The first column is the date of the
8 transaction, whether it was a debit or credit regardless. The
9 second column is if it was a credit to the account, meaning
10 money coming in and who sent it. The third column here is if it
11 is a credit to the account -- excuse me -- again, money coming
12 into that account, what the total dollar amount into the account
13 was. The fourth column is if it's a debit transaction, meaning
14 money going out of the account, who it was sent to and then also
15 if there was a memo line with some of the information that might
16 be included there. And then the final column is for the debits,
17 meaning again the money going out of the accounts, what the
18 dollar total was.

19 Q. And how is the information sorted on this chart?

20 A. By date, chronologically.

21 Q. Okay. You testified previously there were two credits
22 reflected in the account. Are those shown on this exhibits?

23 A. Yes, ma'am, they are.

24 Q. Okay. Can you identify where they are?

25 A. You bet. Right there and right there, 12 million and

1 12 million in the third account or third column. Excuse me.

2 Q. Okay. You said 12 million and 12 million?

3 A. They're 12 million and 20 million. Excuse me.

4 Q. Okay. Where does the rest of the chart -- where does the
5 rest of the information on this chart come from?

6 A. Oh, the documents in Government's Exhibit 1.

7 Q. Okay. And are those from wire debit advices?

8 A. Yes, they are.

9 Q. I'm going to ask you about a few line items on this chart.
10 Can you please take a look at page 26 of Government Exhibit 1?

11 Okay. Can you explain, and I'm going to try to do
12 these side by side, but their difficult to explain.

13 MS. ARREOLA: Your Honor, may the witness approach the
14 boards?

15 THE COURT: Yes, ma'am? Is he going to be pointing to
16 the chart.

17 MS. ARREOLA: Yes, sir.

18 MR. HANSHEW: Judge, I'm going to take you up on that
19 offer, if I can.

20 THE COURT: Okay. Sure, absolutely.

21 BY MS. ARREOLA:

22 Q. Okay. And if you look at this screen page 826 from
23 Government Exhibit 1 that's showing on the screen, can you
24 explain how the information from this page, from Government
25 Exhibit 2, is reflected on Government Exhibit 1?

1 A. Yes, ma'am. So, this is a debit wire debit to the account,
2 so a transfer of money out of the account. It shows the date,
3 which is going to be April 1st, 2010, that's reflected on the
4 chart right here. The total dollar amount is going to be
5 \$11,321,093, and it is going to be from Mitsubishi Powers -- or
6 excuse me -- it's from the Turks & Caicos account and it's being
7 sent to Mitsubishi Power Systems Americas, Inc.

8 MS. ARREOLA: Okay. And when the witness said, right
9 here, may the record reflect that he was pointing to the board
10 that is Government Exhibit 1?

11 THE COURT: Any objection to that, Mr. Hanshaw?

12 MR. HANSHEW: No, Your Honor.

13 THE COURT: The record will so reflect.

14 BY MS. ARREOLA:

15 Q. So I'm going to ask you to take a look at page 1070, which
16 is showing on the screen from Government Exhibit 1. Can you
17 explain how this information is reflected on Government Exhibit
18 2?

19 A. Yes, ma'am. The date of the transaction -- excuse me -- is
20 December 10th, 2010. It is a debit, so again money coming out
21 of the account in the form of a wire transfer. The total amount
22 is going to be \$200,000, and it's going from the Turks & Caicos
23 into -- to Charlotte's, Inc., and that is 5411 North Mesa,
24 El Paso, Texas, and that is reflected right here on the chart.

25 MS. ARREOLA: Your Honor, may the record reflect that

1 the Agent has pointed to the line item to Charlotte's dated
2 December 10th, 2010, on the summary chart that's been marked
3 as -- excuse me -- that's been marked as Government Exhibit 2.

4 THE COURT: Mr. Hanshew?

5 MR. HANSHEW: There's multiple Charlotte's lines.

6 THE COURT: He's objecting, because there's multiple
7 Charlotte's lines.

8 MS. ARREOLA: Yes, Your Honor, but not multiple ones
9 that have the same date. The agent was just pointing to the one
10 that is dated December 10th, 2010.

11 THE COURT: Mr. Hanshew?

12 MR. HANSHEW: That's fine, Judge.

13 THE COURT: Okay. The record will so reflect.

14 Just can we cover the thing about the date? To me,
15 that's October 12th of 2010, but I know maybe in Europe they put
16 the month -- I mean could you explain that's what -- in case
17 there's any --

18 MS. ARREOLA: Yes.

19 BY MS. ARREOLA

20 Q. Agent, the Turks and Caicos Islands, are they a British
21 territory?

22 A. Yes, they are.

23 THE COURT: And so that's why the date --

24 BY MS. ARREOLA

25 Q. Is that why the date is reversed?

1 A. Yes. Because the way that they write the date in Brittain
2 or England is the day, then the month, then the year, so the
3 10th is the tenth day of the month. The next number is 12, so
4 December and then finally the year 2010.

5 THE COURT: Thank you.

6 BY MS. ARREOLA

7 Q. I'm going to ask you to take a look at page 456 of
8 Government Exhibit 1.

9 Can you explain how this information on page 456 is
10 reflected on the summary chart?

11 A. Yes, ma'am. First of all, it's another wire transfer
12 debit, again, the money going out of the account. The day of
13 the transaction is going to be March 17th, 2001. It's from the
14 Turks & Caicos account. It is for \$152,000 and it is being sent
15 to First New Mexico Title an Abstract Company, Taos, New Mexico,
16 and is reflected on the chart right here.

17 MS. ARREOLA: And Your Honor, may the record reflect
18 that the agent has pointed to the March 17th, 2011 transaction
19 on Government Exhibit 2.

20 THE COURT: Mr. Hanshew?

21 MR. HANSHEW: No, objection, Judge.

22 THE COURT: The record will so reflect.

23 BY MR. ARREOLA:

24 Q. I'm going to now ask you to take a look at page 171 of
25 Government Exhibit 1. Can you explain how the information on

1 this page is explained on Government Exhibit 2?

2 A. Yes, ma'am. Once again this is another wire transfer debit
3 to the account. So it is dated March 30th, 2012. It is for a
4 total of \$46,655, and it is being sent to Rudolph Chevrolet and
5 referencing Marco Delgado, and it is reflected on the chart
6 right here.

7 MS. ARREOLA: Your Honor, may the record reflect that
8 the agent has pointed to the March 30th, 2012 line item to
9 Rudolph Chevrolet on Government Exhibit 2.

10 MR. HANSHEW: No, objection.

11 THE COURT: Record will so reflect.

12 MS. ARREOLA: No further questions, Your Honor. The
13 government passes the witness.

14 THE COURT: Thank you, Ms. Arreola.

15 Mr. Hanshaw?

16 Can the agent have a seat or are you going to want him
17 at the chart?

18 MR. HANSHEW: I don't need the chart, Your Honor.

19 THE COURT: All right. Okay. Go ahead and have your
20 seat then.

21 MR. HANSHEW: No.

22 BRIAN CUNNINGHAM,

23 CROSS-EXAMINATION BY THE DEFENSE

24 BY MR. HANSHEW:

25 Q. Agent, in order to get the information for this chart, you

1 went through a bunch of bank records, right?

2 A. Yes, sir.

3 Q. Okay. But you indicated you weren't the one that created
4 the chart?

5 A. No, sir, I was not.

6 Q. Who created that?

7 A. I am not sure.

8 Q. Okay. You have no idea who created it?

9 A. I'm not sure. It was sent to me by Special Agent Fry, but
10 I don't know if he created it.

11 Q. You didn't ask to verify the veracity of this, the source?

12 A. Sir, I did verify the transactions based off of the records
13 from the Turks & Caicos account.

14 Q. Okay. Why didn't you make your own chart then?

15 A. It was the one that was provided to me. I was just asked
16 to verify it.

17 Q. Okay. And I guess to the best of your knowledge, because
18 you don't know who created this, what documents did they use to
19 create it?

20 A. The documents contained in Government's Exhibit Number 1,
21 the bank records from the Turks and Caicos Islands.

22 Q. Okay. But those aren't complete, right?

23 A. I'm not -- I'm sorry, in Exhibit 1?

24 Q. Correct.

25 A. Oh, no, those are not all of the documents that were

1 received.

2 Q. Right. Because the government received thousands of pages
3 of documents?

4 A. I'm not sure how many they are, but they are quite a few.

5 Q. When did you first get on this case, sir?

6 A. I assumed the case in December 2014.

7 Q. Okay. And so from December 2014 to today, your testimony,
8 have you had a chance and opportunity to review all of the
9 documents?

10 A. Yes, sir, I did review all of the documents in that
11 request.

12 Q. Okay. And how many pages are there of the banking records?

13 A. Several. I can't speculate as to how many there would be
14 in.

15 Q. Over a thousand?

16 A. I can't say, sir.

17 Q. Could you physically describe the amount of documents?

18 A. It was a stack, probably that big, just off the top of my
19 head.

20 Q. So a stack about that big, as Government Exhibit 1 is only
21 this big, right?

22 A. Yes, sir.

23 Q. So there's a bunch of documents that aren't included then?

24 A. Yes, sir.

25 Q. What's not included?

1 A. Other transactions and statements that are relevant to that
2 account.

3 Q. Okay. And who decided to not show those to this jury?

4 A. I'm not sure.

5 Q. You don't know who excluded them?

6 A. No, sir.

7 Q. Okay. You didn't have any part in that?

8 A. No, sir.

9 Q. All right. Now you testified today about a bunch of, as
10 you said, bank documents and these transactions, do you have an
11 academic background in banking?

12 A. I have a business management degree.

13 Q. Okay.

14 A. And I have -- also, I have my serious three stocks
15 and commodities or commodities and futures license.

16 Q. Okay. And you would agree commodities and futures is a
17 completely different profession than banking, correct?

18 A. Yes, sir.

19 Q. They have nothing to do with one another?

20 A. Well, they both involve money, but they are different.

21 Q. So your studies from that didn't train you to review and
22 analyze these particular type of bank documents?

23 A. Uh, no, sir.

24 Q. I'm sorry?

25 A. No, sir.

1 Q. Do you know why the person who created these charts isn't
2 here?

3 A. No, sir, I don't.

4 Q. So, the best way to characterize these would be that this
5 is a cheat sheet to be able to explain a larger volume of
6 documents?

7 A. Yes. My understanding is it's the transactions that are
8 most relevant to the case.

9 Q. Okay. Most relevant meaning there could be other documents
10 that are relevant?

11 A. Possibly.

12 Q. Do you know?

13 A. No, sir I don't.

14 Q. Okay.

15 MR. HANSHEW: One moment, Judge?

16 THE COURT: Yes, sir.

17 MR. HANSHEW: Nothing further, Judge. Thank you.

18 THE COURT: Ms. Arreola?

19 BRIAN CUNNINGHAM,

20 REDIRECT EXAMINATION BY THE GOVERNMENT

21 BY MS. ARREOLA:

22 Q. Agent Cunningham, who is is the account holder for the
23 Skippings -- for this account that you verified the information
24 for?

25 A. Skippings and Rutley, their attorneys.

1 Q. And were there other client's information reflected in
2 those bank records that were received?

3 A. Yes, ma'am.

4 Q. And those other client's records are not reflected, are not
5 contained in Government Exhibit 1; is that right?

6 A. That is correct.

7 MS. ARREOLA: Your Honor, the government offers the
8 entire packet of material received from the Central Authority of
9 the Turks and Caicos Islands as Government Exhibit 159.

10 MS. KANOF: No. Make it 1-A. Yeah. Just make it 1-A
11 because it's part -- it's a subset.

12 THE COURT: All right. So GX-1A is the entire record?

13 MS. ARREOLA: Yes, Your Honor.

14 MS. KANOF: And we're looking for a government's
15 exhibit sticker, Your Honor.

16 THE COURT: Mr. Hanshew, any objection to GX-1A?
17 Those are the entire records.

18 MR. HANSHEW: Obviously, they haven't showed it to us
19 or had an opportunity --

20 THE COURT: Can you show those to Mr. Hanshew?

21 I'm assuming you used -- saw these in discovery.

22 MS. KANOF: We did show it to him before and
23 (indiscernible) in discovery, Your Honor.

24 MS. ARREOLA: Yes, Your Honor. And Mr. Hanshew has
25 had an opportunity to inspect them at our office.

1 MR. HANSHEW: Judge, we, I guess, object that these
2 were never marked as an exhibit before trial.

3 THE COURT: Well, I'm going to --

4 Ms. Arreola, did you have a response?

5 MS. ARREOLA: Yes, Your Honor. He's asked the agent
6 about the rest of the documents and so he's made it relevant.

7 THE COURT: All right. I'm going to overrule the
8 objection and admit GX-1A.

9 MS. ARREOLA: Your Honor, no further questions of this
10 witness.

11 THE COURT: Mr. Hanshaw?

12 MR. HANSHEW: I'd just ask for an opportunity to
13 review the entirety before it goes to the jury, Judge.

14 THE COURT: Sure.

15 MR. HANSHEW: Thank you.

16 THE COURT: I'm assuming that you've had that through
17 discovery, you said.

18 MR. HANSHEW: Right, but --

19 THE COURT: You just want to make sure those are them,
20 there's not something new?

21 MR. HANSHEW: Exactly, Judge. We didn't get this
22 design.

23 THE COURT: All right. Any other questions of Agent
24 Cunningham, Mr. Hanshaw?

25 MR. HANSHEW: No, sir.

1 THE COURT: You may take your seat.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Ms. Kanof, who is your next witness?

4 MS. KANOF: The government calls Kevin Beddard.

5 (Witness previously sworn.)

6 THE COURT: Ms. Kanof?

7 MS. KANOF: May I proceed, Your Honor?

8 THE COURT: Yes, ma'am.

9 JOSEPH KEVIN BEDDARD,

10 DIRECT EXAMINATION BY THE GOVERNMENT

11 BY MS. KANOF:

12 Q. State your name for the record please, sir?

13 A. Joseph Kevin Beddard.

14 Q. And how are you employed?

15 A. I'm the director of my own company, a consulting company
16 now.

17 THE COURT: If I could ask you to roll into the
18 microphone a little bit, kind of lean in to it when you answer.

19 THE WITNESS: Oh, okay.

20 THE COURT: We'll be able to hear you better. Thank
21 you, sir.

22 THE WITNESS: Thank you.

23 BY MS. KANOF:

24 Q. You were sworn to tell the truth a few minutes ago,
25 correct?

1 A. Correct.

2 Q. Okay. Now, you were starting to say how you're employed?

3 A. At the moment I have my own consult agency business called
4 Pete Grove Limited based in the U.K.

5 Q. Okay. You don't sound like you're from this country.
6 Where are you from?

7 A. I'm originally from the U.K.

8 Q. The U.K.?

9 A. Yes.

10 Q. And where in the U.K. are you from?

11 A. A place called Teeside.

12 Q. Is that T-E-E-S-I-D-E?

13 A. Correct.

14 Q. And where is Teeside?

15 A. It's in northeast of England.

16 Q. And what is your, you said your company was called Pete
17 Grove?

18 A. Correct.

19 Q. Okay. And what business -- kind of business is Pete Grove?

20 A. I do a consult agency in the power, and at the moment I am
21 contracted with Mitsubishi Power Systems America on a
22 consultancy basis.

23 Q. Okay. How long have you been in this business?

24 A. In the power business, since 1976.

25 Q. What kind of education do you have related to the power

1 business?

2 A. My schooling was a secondary modern.

3 Q. Secondary modern? What is that --

4 A. I think it would be high school, I think, here, would be
5 the same.

6 Q. I'm sorry. I talked over you. I apologize.

7 What kind of school?

8 A. It would be a stead school similar here for the public. I
9 think that's what I mean.

10 Q. Like high school or...

11 A. Yes, you go up to 15, and then I went to college, Longlands
12 Technical College.

13 Q. Okay. And technical college it's still a four-year
14 university type school?

15 A. It's a technical college, which is you specialize into like
16 myself, mechanical engineering, so I did mechanical engineering
17 for four years, but on a day release. So I went to work and
18 then I got released to go to college for one day and three
19 nights a week.

20 Q. Okay. So this kind of college that your went to was a
21 combined apprenticeship and education, would that be fair?

22 A. Yes.

23 Q. And you finished that education and that apprenticeship; is
24 that correct?

25 A. That's correct, yes.

1 Q. And when did you finish it?

2 A. Around 1973.

3 Q. Okay. And after that, were you considered an engineer?

4 A. No. I would be a technician.

5 Q. A technician?

6 A. Yeah.

7 Q. So, what kind of apprenticeships were you doing while you
8 were on day release?

9 A. Basically, I was doing an apprenticeship for a millwright
10 fitter, Tanner (phonetic), which is to utilize all machine tools
11 and to maintain and install rotating equipment.

12 Q. Okay. You are saying rotating equipment, correct?

13 A. Correct.

14 Q. Okay. And that was many, many years ago. If you don't
15 mind me asking, how old are you?

16 A. I'm 63.

17 Q. Okay. You're not the only one in this courtroom. There
18 are three of us that are 63?

19 A. Oh, thank you.

20 Q. And so have you been in this industry regarding rotating
21 equipment your entire professional career?

22 A. Basically, yes.

23 Q. Okay. What is rotating equipment?

24 A. Rotating equipment is any equipment that revolves; pumps is
25 classed as rotating equipment, compresses rotating equipment,

1 turbines, engines; and basically anything that twirls is
2 rotating equipment.

3 Q. By turbines, what do you mean?

4 A. Turbines at that time was steamed turbines and it involved
5 steam turbine as a driver of pumps, compresses, et cetera, and
6 then later on it was to drive generators into power.

7 Q. Okay. So did -- for many years, did you travel all over
8 the world learning different aspects of your specialty?

9 A. I did.

10 Q. Okay. Let's just try to hit the highlights that give
11 you -- that bring you to the courtroom today, if that's
12 possible.

13 Did you ever have -- when you started -- well, first
14 of all, when you came out of school, what was the first aspect
15 of your engineering that you or your business that you tried to
16 learn?

17 A. Basically, I wanted to expand the knowledge to find out in
18 which sector of engineering I was best suited and enjoyed most.
19 So they -- I went into light industry, initially, from the
20 petrochemical, because I was in the petrochemical environment.

21 Q. And did you work for someone or did you have your own
22 consulting firm then?

23 A. No, I worked for people. So I went into Light Engineering,
24 which is packaging, right, which was Lyons Tetley, and I was
25 there --

1 Q. That's the name of the company?

2 A. Yes. And --

3 Q. Lyons Tetley?

4 A. Yeah.

5 Q. Is that Tetley of Tetley Tea?

6 A. Exactly, because it was machines producing tea bags, and I
7 looked after them high speed packaging machine as well as the
8 behind the scenes where they blend the tea products, because you
9 get multiple tea. It doesn't make one tea. You have to have a
10 blend of tea.

11 Q. And after your light year, your touch with Light
12 Engineering, did you learn anything about offshore drilling?

13 A. Basically, I left there and I went off to the Ninian Field
14 for a company called Wilson and Molten from U.K. And I was
15 assigned, was (indiscernible) to John Brown Turbines from Clyde
16 side. That was my initial thing to gas turbines driving
17 generators. And I was in the Ninian Field and I was installing
18 two Nancy-type gas turbines.

19 Q. Okay. And where were you installing these gas turbines?

20 A. On the rigs in the north sea on the Ninian Field.

21 Q. Okay.

22 MS. FRANCO: Your Honor, I'm sorry to interrupt, but I
23 don't know what the relevance of all of this is, unless she's
24 proffering him as an expert.

25 THE COURT: That's what I'm assuming.

1 MS. KANOF: I'm not so much proffering him as an
2 expert to give special scientific knowledge. I'm proffering him
3 as an expert to know what happened in this case. He
4 participated in this case. He was working for Mitsubishi at the
5 time and he developed an expertise about this particular
6 equipment. And so I'll try to go a little bit faster, but I
7 think it's important that he has a superior expertise with this
8 particular equipment in this case.

9 THE COURT: So he's an expert on the equipment.

10 MS. KANOF: On this equipment.

11 THE COURT: Okay. So --

12 MS. FRANCO: Your Honor, they never noticed us that he
13 was an expert. We thought was a fact witness in the case.

14 MS. KANOF: Well, he's very much a fact witness. He's
15 on tens of hundreds of e-mails. And he talked endlessly with
16 the defendant. And I'm not tendering him as an expert, because
17 I'm not going to ask him about expertise. But I think it's
18 important that he knows his stuff, I guess is the best way to
19 put it.

20 THE COURT: Right. But if he's a fact witness, he's a
21 witness to the facts and his background really isn't all that
22 helpful to us.

23 BY MS. KANOF:

24 Q. Did you develop over the years extensive knowledge of
25 rotating equipment including turbines?

1 MS. FRANCO: I'm sorry, Your Honor. Did you sustain
2 my objection?

3 THE COURT: I did.

4 THE WITNESS: To answer your question --

5 MS. KANOF: No, he -- the Court --

6 THE COURT: He can answer that one last question. I
7 think we got the idea that he knows about turbines.

8 THE WITNESS: Yes, for the installation commission of
9 the turbines, yes.

10 BY MS. KANOF:

11 Q. Did you ever go to work with Mitsubishi?

12 A. Yes, I did.

13 Q. When was that?

14 A. Directly for Mitsubishi was in 2000 -- maybe, 2005.

15 Q. Did you have contact with Mitsubishi and work at the
16 Mitsubishi plant in Japan prior to that?

17 A. Yes.

18 Q. And when was that?

19 A. Basically my first association with Mitsubishi was in 1992,
20 when I put eight of their gas turbines, installed them. And
21 then I was then --

22 Q. Who were you installing Mitsubishi's gas turbines for?

23 A. Enron.

24 Q. Enron?

25 A. Yes.

1 Q. Where were you installing them?

2 A. In Teesside.

3 Q. That's your hometown?

4 A. That's correct.

5 Q. And how -- and did you have to go to Mitsubishi in order to
6 be permitted to do that?

7 A. No, not for the Teesside project, but the subsequent
8 project where Mitsubishi, they actually split or divided from
9 Westinghouse, and they went on their own technology. And they
10 got their first project in Europe, in Holland. So there, asked
11 me would I go to Japan and be tested, for example, am I capable
12 of putting their machine, right, for them in Europe, which I
13 did.

14 Q. Is there a difference between a turbo generator for -- to
15 be installed in Japan and one to be installed in Mexico?

16 A. No. It depends on which technology you are using.
17 Basically, the units in Mexico were F. Technology, which is old
18 technology. The technology nowadays, we're up to J. now, which
19 is advanced efficiency.

20 Q. At some point in time, were you offered a job by Mitsubishi
21 in the United States?

22 A. Yes.

23 Q. When was that?

24 A. Basically, after the Dubai project from Mitsubishi,
25 which finished in 19- --

1 Q. You were in Dubai?

2 A. For Mitsubishi, yes.

3 Q. What were you doing for Mitsubishi in Dubai?

4 A. I was installing six gas turbines.

5 Q. And after you did that, they asked you to do what?

6 A. Basically, because the Dubai project was a very intense
7 project, I was given the portfolio of Mitsubishi of all of the
8 projects, and the they asked me to pick one, which I would like
9 to do.

10 Q. And where did you end up?

11 A. I didn't end up at the one I picked. I ended up in Dallas,
12 Texas. Well, outside of Dallas, Texas, in a place called
13 Grandbury.

14 Q. Grandbury?

15 A. Yes.

16 Q. How long were you there?

17 A. Two-and-a-half years.

18 Q. And were you installing turbines?

19 A. Yes.

20 Q. For a power plant?

21 A. Yes. Two of them.

22 Q. And then what happened with regard to your employment with
23 Mitsubishi?

24 A. They asked me to go down to headquarters in Lake Mary and
25 would I start setting up construction.

1 Q. Is that Lake Mary, Florida?

2 A. Correct.

3 Q. Okay. And Mitsubishi had a business there at that time?

4 A. Yes. They started a U.S. entity there and then the
5 president was known to me and I was going to go out to --

6 Q. Wait. The president of?

7 A. Mitsubishi Americas.

8 Q. I'm sorry?

9 A. Mitsubishi Power -- well, Mitsubishi Heavy Industries
10 America, at the time.

11 Q. Okay.

12 A. And the they asked me would I in between going to North
13 Cairo in Egypt. I had a project already assigned to me, my next
14 one, over in Japan, and they asked us to stay there six weeks.
15 And I was in two --

16 Q. He asked you to stay in Lake Saint Mary, Florida, for six
17 weeks?

18 A. Yes, to set up some construction procedures.

19 Q. And what happened?

20 A. Well 15 years later, I'm here.

21 Q. Okay. So when did you move to Florida?

22 A. Basically, 2003.

23 Q. And when you got to Mitsubishi in Lake Mary, Florida, did
24 you get hired by Mitsubishi to work directly for them in the
25 United States?

1 A. Not initially, because I wanted to keep as a contractor.

2 Fussaya (phonetic), it was the president, as I mentioned --

3 Q. Can you spell his name for the court reporter, please?

4 A. Oh, God, I couldn't.

5 Q. You can't. Okay.

6 A. It begins F-U-something, right. They kept pestering --

7 Q. We'll put "phonetic" next to it.

8 A. Okay. (Indiscernible).

9 Q. That's fine. Go ahead.

10 A. And he kept asking me, right, he says I'm putting a
11 transfer in for you; would you object? Meaning, moving from
12 M.H.I. Takasago in Japan to the states.

13 Q. So you are talking about the president in Japan that asked
14 you --

15 A. No, no, the president in Lake Mary of the Americas.

16 Q. Okay.

17 A. Was -- kept asking me.

18 Q. So when did you become a Mitsubishi employee?

19 A. 2005.

20 Q. Okay. 2005. And what was your title?

21 A. Basically then construction manager.

22 Q. Okay. And what were your duties, when you got to
23 Mitsubishi were hired as a construction manager, who was the
24 senior vice president of Mitsubishi in Lake Mary?

25 A. That was Hector Ponce.

1 Q. And who was the vice president of sales?

2 A. That would be John Adams.

3 Q. And what were your duties and responsibilities at the plant
4 in Lake Saint Mary, Florida?

5 A. Well, it's the headquarters. And I think, my agreement was
6 to develop a construction erection team from local, meaning,
7 U.S., personnel and train them in the Mitsubishi procedures and
8 how we put the machines in. So we would not need the Japanese
9 technicians coming from Japan, which is very costly, to the
10 states where we have quality here.

11 Q. Okay, did they actually manufacturer turbines in Florida?

12 A. No. But we ended up manufacturing parts of the gas turbine
13 like combustors and blades there.

14 Q. Okay. So, once you had -- did you do that, did you put
15 together a team?

16 A. It was -- and it's still a work in progress.

17 Q. I'm sorry. I didn't understand.

18 A. It's still a work in progress.

19 Q. A work in progress?

20 Now, is there anything else you did for Mitsubishi?
21 Were they -- where they antiquated in any way or did you have to
22 change anything?

23 A. Yeah. As we developed and we started building up the
24 construction team, and then it went on to the commissioning team
25 and then it went on to projects, one of the biggest issues we

1 had was that 95 percent of the manufacturing of all the
2 equipment was done in Japan, and it was put on ships and coming
3 to the states. So at that time, John Adams was now my boss, if
4 you like, so he gave me the (indiscernible) to customize and to
5 modulize that equipment and then actually get it manufactured
6 here, but in a module basis, so we could reduce the erection
7 time, make it more cost efficient. So I developed the balance
8 of planned equipment which is the axillaries to the turbine.

9 Q. Okay. So you have a turbine and then you have axillaries;
10 is that correct?

11 A. Correct, correct.

12 Q. All right. So by 2009, did you have a new title?

13 A. Yeah, I then -- well, several titles -- I went to director
14 of construction, then I went to general manager of projects and
15 finally V.P. of all projects.

16 Q. Okay. So what different -- John Adams was the vice
17 president of sales, correct?

18 A. (Nodding head affirmatively.)

19 Q. Is that yes, sir? You have to speak.

20 A. Oh, sorry. Yes.

21 Q. Okay. And you were in projects; is that correct?

22 A. Correct.

23 Q. How does projects interact -- and by the time, when you
24 were the general manager of projects was John Adams still your
25 boss?

1 A. Um, yes in the early parts. But what had happened was
2 construction and commission and projects, we would come under
3 engineering, so our V.P. was an engineer from Japan. And then
4 when John moved over, he took over that reign, so everybody
5 reported to John. So that was the change in reporting
6 structure.

7 Q. Okay. What is the gray market?

8 A. The gray market is stock units or -- I mean stock units,
9 which we've already manufactured, and the sale went bad, so they
10 never went and got delivered, or a project we got delivered, all
11 of the equipment to the project and project did not materialize.

12 Q. So, for example, in your average contract, is the turbines
13 preexisting?

14 A. No.

15 Q. Okay. So say El Paso electric company ordered turbines
16 from Mitsubishi, would they have to be built?

17 A. Correct, manufactured.

18 Q. Okay. But in the gray market, if there's perhaps a turbine
19 that's been built for another project it might fit what El Paso
20 Electric needs; is that correct?

21 A. In layman term, but there's a lot more nuances of that.

22 Q. Go ahead and explain it, please.

23 A. The turbine will be still be the same, the engine, but
24 auxiliaries, right, will not, because what we have to look at is
25 the technical specification. Every location has it's own

1 nuances, so we have to look at what we call a "site speck." In
2 that site speck we'd have the seismic zone.

3 Q. Okay. What's a seismic zone?

4 A. It's where there's earthquakes or not and where it's level.
5 So what we have to do is make sure our equipment and all
6 axillaries are strong enough, right, for that environment. And
7 basically with that we have building codes, and there's two that
8 we uses, which is the I.B.C., International Building Code and
9 U.B.C. Code. And then they're set out what needs to be done, so
10 by code we have to build it. And then there's wind loading and
11 snow loading, right, basically it has got to be strong enough
12 for hurricane, right, with it --

13 Q. In some places?

14 A. In some places --

15 Q. We don't usually get hurricanes in El Paso, but in some
16 places, right?

17 A. Okay.

18 Q. But I know you got them in Florida, right?

19 A. And then the other one is like wind loading and snow
20 loading, because of the wind -- the snow actually is a hell of a
21 wisp, you know, so if you got a roof and you got six inches of
22 snow on it, you got a real dead weight coming down, so we have
23 to make sure the structure is domed for that. So -- and also
24 the last one is temperature, because our gas has to go into the
25 gas turbine and stay in temperature, so the gas turbine can

1 actually operate, it doesn't stop with it. So there's all of
2 these nuances that have to be looked at.

3 Q. At sometime did you get approached by John Adams about a
4 possible contract with a company -- with the Mexican-owned
5 electric company, C.F.E., or did he just approach you and not
6 tell you who it was for?

7 A. Yeah, yeah. See, I don't get involved in those things. I
8 just get things done.

9 Q. You are not bothered about what? I'm sorry?

10 A. Basically, where they go and what they are. I just need
11 the specification, whatever it is, we're going to go there and
12 do a good job, build it and make sure that it operates, right --

13 Q. Okay.

14 A. -- because that's our brand -- well, was our brand for
15 Mitsubishi, right. But John come to us and asked me to do an
16 estimate, right, and could I put an estimate together for a two
17 and one, gray and market.

18 Q. What's a two and one?

19 A. Two gas and one steam turbine.

20 Q. And is the two and one a pretty common combination of
21 turbines to generate electricity?

22 A. In the U.S., yes.

23 Q. Okay. And it's two what kind and one what kind?

24 A. Well, it's two gas turbines, depending on the technology,
25 as I've just said, was it this one with an F. Technology, which

1 was a gray market. Well, I've just finished a year previous one
2 or assisted plan to that and -- in Minneapolis, St. Paul, two
3 and one plant there for excel energy.

4 Q. Okay. So two of them generate gas and other one is what
5 kind?

6 A. No, the two gas turbines generate electricity --

7 Q. Okay.

8 A. But actually the exhaust gasses actually are then used into
9 an H.R.S.G., a kettle if you like, so it's a heat source and so
10 it boils up the kettle, steam comes out of the kettle, and then
11 we use that steam in the steam turbine, so it makes the process
12 very efficient if we have a two and one.

13 Q. So two gas and one steam?

14 A. Correct.

15 Q. And sometimes the steam is called "vapor"?

16 A. Uh, well, in Spanish, yes.

17 Q. Okay. So John Adams came to you and asked you to prepare
18 and estimate and what did he want an estimate for?

19 A. Because there was a potential of a project in Mexico,
20 right, could I get the best figures to him.

21 Q. Okay. And what do you have to estimate?

22 A. Basically, again, I'd estimate the equipment, what needs to
23 be there, what is there, what isn't there, find out what I need
24 to do, what I need to upgrade on basic units.

25 Q. Were you looking at specific preexisting gray market

1 turbines?

2 A. Yes. They already purchased two gas turbines and one steam
3 turbine from a French company called A.D.F.

4 Q. Okay. So let's go back.

5 You knew that there were three turbines, two of them
6 were steam or two of them were gas and one was steam; is that
7 correct, that already were in existence?

8 A. I knew about them, yes.

9 Q. Okay. And you knew what models they were, correct?

10 A. I knew they were F. Technology. I didn't know what the
11 manufacturing time was when that was manufactured.

12 Q. Why is it impossible -- why is it important to know when
13 they were manufactured?

14 A. Because as we develop, we improve, so we have modifications
15 and we call them prod-mods (phonetic). And when there's a
16 prod-mod (phonetic) developed, right, it then says that it has
17 to go in the next machine. So I have to look when the machine
18 was manufactured and when we're going to deliver, right, and
19 say, right, that leaves all of these prod-mods on it to go out,
20 so when it leaves the factory again, right, it has all of the
21 modifications in.

22 Q. So, you knew that there were three existing turbines that
23 had been created for another purpose; is that correct?

24 A. Yes.

25 Q. Okay. And were they supposed to go to Mexico originally?

1 A. No, they were supposed to go to Brazil.

2 Q. They were supposed to go to Brazil.

3 And you didn't know how old they were, correct?

4 A. Not at that time.

5 Q. Were they new or had they been used?

6 A. Uh, they were -- well, they weren't new, but they'd never
7 been used. There was no fired hours on there.

8 Q. Okay. There's no what hours?

9 A. "Fired," meaning that we set the gas up.

10 Q. Okay. They've never -- they've never generated electricity
11 before?

12 A. Correct.

13 Q. Okay. And -- but John Adams identified that these three
14 turbines that originally were built by Mitsubishi to go to
15 Brazil, he wanted you to give him an estimate to do what?

16 A. To refurbishing what we need to get an estimate and what it
17 would cost.

18 Q. Okay. So you were going to give Mr. Adams an estimate of
19 what it would cost to refurbish these three preexisting
20 turbines, correct?

21 A. Correct.

22 Q. Do you know where they were stored?

23 A. Yes. The two gas turbines were stored in the factory in
24 Takasago.

25 Q. They were -- I'm sorry?

1 A. The two gas turbines were in Japan at our factory. The
2 steam turbine was in storage at Dunkirk, France.

3 Q. Is that because France was the intermediary for the Brazil
4 project?

5 A. No, because France A.D. F., it was a French company, owned
6 the turbines, that's who we bought them of, right.

7 Q. Okay, so what does it take to refer -- what went into the
8 estimate?

9 A. Basically, what I would do then is because of the prod-mods
10 and that -- and I'd look, we'd have to open the casings, inspect
11 all of the blades and everything and all of --

12 Q. Do they rust?

13 A. Basically, I'm not supposed to say that, but, yes, they
14 can.

15 Q. Well, you are under oath, Mr. Beddard.

16 A. I know.

17 Q. Do they rust?

18 A. In certain parts they can -- you can get corrosion.

19 Q. Okay. And if they do, you have to clean that up, correct?

20 A. We have to, yes.

21 Q. But you have to check first?

22 A. Yes.

23 Q. And what else do you have to do to refurbish other than try
24 to get rid of that kind of problem?

25 A. Well, we've got to look at the equipment, the auxiliary

1 equipment, again, right, when they were supplied and who
2 supplied them, who was the vendor who supplied the
3 (indiscernible) pump.

4 (Court reporter asks for clarification.)

5 THE WITNESS: The lube, L-U-B, lube. Lubrication
6 is --

7 THE COURT: Lube and oil pump?

8 THE WITNESS: Yeah.

9 A. So we have to look at the vendor and does the vendor still
10 support, right, that piece of equipment, because what we have to
11 look at is that we have to give a warranty, right, and sometimes
12 it's one year two-year warranty, after we finish the erection
13 and commission of it. So that could be a period of four years
14 or five years in some cases, so what we got to look at, we
15 supported by the vendor who supplied us that piece of auxiliary
16 equipment that it still supports that as we go.

17 Q. Now, you --

18 THE COURT: Mr. Kanof, if I can stop you there so we
19 can take a break. We'll be in recess for ten minutes. If you
20 would be back at five minutes 4:00, we'll resume our proceedings
21 then.

22 COURTROOM SECURITY OFFICER: All rise.

23 (Break taken at 3:46 p.m. to # p.m.)

24 (Jury present.)

25 THE COURT: Let the record reflect that all members of

1 the jury are present, the United State's assistant attorneys are
2 present, the defendant and his counsel are present.

3 Ms. Kanof?

4 MS. KANOF: May I proceed, Your Honor?

5 THE COURT: Yes, ma'am.

6 MS. KANOF: Thank you.

7 JOSEPH KEVIN BEDDARD,

8 DIRECT EXAMINATION CONTINUED

9 BY MS. KANOF:

10 Q. Mr. Beddard, we were talking about this estimate that you
11 had to make. And before you told the jury about difference in
12 the gray market, you had to look at the equipment because there
13 are differences for the auxiliaries relating to location that
14 the generators are going to be placed, correct?

15 A. Yes, it is.

16 Q. Okay. So the two in Japan and the one in France that you
17 were going to give estimates to Mr. Adams about to refurbish,
18 what were they originally -- where were they supposed to go,
19 originally?

20 A. They were supposed to go to a place called (indiscernible)
21 in Brazil.

22 (Court reporter asks for clarification.)

23 THE WITNESS: Paracommy (phonetic) in Mexico -- in,
24 Brazil.

25 Q. In Brazil.

1 Okay. And if I asked to you spell it for the court
2 reporter, could you do that?

3 A. P-A-R-C-E-M-I -- oh, God.

4 Q. Okay. Close enough.

5 So, did Mr. Adams tell you where these particular
6 units would possibly now be going?

7 A. Mexico.

8 Q. Okay. And -- so what kind of what kind of research did you
9 have to do in order to create your estimate for refurbishing
10 these machines for Mexico instead of Brazil?

11 A. Yeah, well, I did a budget reestimate, basically, because I
12 just completed a similar project in St. Paul on a two and one
13 and it turned out with the same vintage. For budget repair
14 purposes, I used that and brought the actual historic bid from
15 that to build up an estimate, because we don't know if we're
16 going to win, right, so for the estimating purposes --

17 Q. So what goes into that budget?

18 A. Basically, I split up the gas turbines and the steam
19 turbines in the systems, right, and the gas turbine, we normally
20 have 100 systems, and each system has a designated number, so I
21 go through each one them, what its technical is and an estimate
22 end, and then go through each one section and then end up with a
23 total -- a grand total for both gas turbine and steam turbine.

24 Q. Okay. When you do an estimate, do you also have to know
25 when the equipment has to be ready?

1 A. Basically, yes. The shipment -- the shipping is crucial
2 for scheduling-wise, because the refurbishment was in Japan, the
3 gas turbines, I have to find a slot within the factory, because
4 there's manufacturing slots, so if there's orders going in, I --
5 we have to work out a slot where we can put that gas turbine in.
6 So I have to ask Japan, where is my slots, and they'll come back
7 to me, when do you need the machine, and that would be the
8 delivery.

9 Q. Okay. And also does it also make a difference whether or
10 not the equipment is going to be used right away or whether or
11 not the equipment is going to be used a year from then?

12 A. Yes, because we have different storage times. We have a
13 short term, which is basically for ocean and going in. It's
14 basically for one year, I think. And then we have the long term
15 storage procedure, which actually goes up to about five years.

16 Q. So, if a piece of equipment is refurbished -- is it
17 refurbished before it's shipped or after it's shipped?

18 A. In the gray market, I'll make that decision whether it's
19 cost effective. And if I ship it from the other side of the
20 world, right, especially with the shipping and the docks and how
21 they handle things, is it going to get damaged? So am I going
22 to get damage at the other end? So then I would make a judgment
23 call to say, no, don't touch it, bring it across the pond. I'll
24 do it here on this side and then it will go to the other side.

25 Q. With regard to refurbishment, are their temperature

1 differences between Brazil and Mexico?

2 A. Oh, the specification, the -- I think it was
3 solicitation -- was spelled out. You needed to do minus
4 19.5 degrees C. That was the temperature that we were told to
5 look at.

6 Q. In Mexico or in Brazil?

7 A. In Mexico.

8 Q. And were the generators made for a different temperature in
9 Brazil?

10 A. Big time -- sorry -- yes.

11 Q. So minus 19 degrees celsius --

12 A. Right.

13 Q. -- in other words, in Agua Prieta, Mexico, it gets colder
14 in Mexico than it does Brazil?

15 A. Correct.

16 Q. So you have to change, do something to the turbines to
17 account for that, correct?

18 A. The auxiliaries.

19 Q. Okay. To the auxiliaries to the turbines, correct?

20 A. Yes.

21 Q. Okay. And were there size differences between Brazil and
22 Mexico?

23 A. Yes.

24 Q. And were the other? I forget, already.

25 A. Wind loading.

1 Q. Wind loading. And were there wind loading differences
2 between Brazil and Mexico?

3 A. They were slight, but not as -- not to affect the design.

4 Q. So we talked a little bit about whether it's the -- a long
5 term shorts -- storage -- or short term storage, was this going
6 to be short term or long term?

7 A. It was short term.

8 Q. And so did you get your estimate from Mr. Adams?

9 A. Yes.

10 Q. And what happened next?

11 A. I stepped out of the picture, because it's not my --

12 Q. You just tell him, here's how much it would cost?

13 A. Basically, yes, right.

14 Q. Based on what you knew?

15 A. Correct.

16 Q. Okay. And did you ever hear that -- so you didn't know
17 what was going on in the project at that time, did you?

18 A. No, just water cooler talk, you know, they're still talking
19 in Mexico, okay.

20 Q. Did you ever hear of -- at that time, did you hear who in
21 Mexico wanted these turbines?

22 A. No.

23 Q. Did you hear whether there was any other company involved?

24 A. I did hear, but as I said before, I administered a contract
25 and I implement --

1 Q. What do you mean you administer the contract?

2 A. It means that a contract is given to us. We check that
3 contract and is it a workable contract, and then we actually
4 administer that to that contract.

5 Q. In November of 2009, what did you learn with regard to the
6 estimate and the work that you had done on these three gray
7 market turbines?

8 A. I got told that the bid had been accepted.

9 Q. Okay. And what does that cause you to do to prepare for
10 your job?

11 A. Basically, what I would look at then is to try to look at
12 tentative schedule and then what manpower I have available, so I
13 can schedule people from other projects into that project.

14 Q. Okay.

15 A. And also visas, because it's in Mexico.

16 Q. I'm sorry?

17 A. Also, I have to look at the visa, right, so we have to look
18 at that because it's international.

19 Q. Okay. And that -- is that visa for personnel --

20 A. Yes.

21 Q. -- that you might have to send?

22 A. Correct.

23 Q. Okay. So you're responsible for all of that?

24 A. Yes.

25 Q. All right. Did you ever hear that the project succeeded or

1 that you got the project?

2 A. I got told that the bid was accepted. But in normal
3 projects in respect to the gray market, then the engineers and
4 the contract's commercial people get together and then they talk
5 and then they finalize.

6 Q. Okay. So what do you mean in normal projects of gray
7 market equipment, they get together; who gets together?

8 A. Basically, the commercial people.

9 Q. Okay. Who are the commerce people.

10 A. Basic sales and commercial, the marketing people get
11 together. And the legal, they formulate a contract, right.

12 Q. And then you administer that contract?

13 A. Correct.

14 Q. Okay. So before -- was a contract formulated, to your
15 knowledge?

16 A. Uh, some paper was formulated in my knowledge.

17 Q. Why were you hesitant to say, yes, a contract?

18 A. Because a contract has four corners to it and what I was
19 seeing didn't have four corners to it.

20 Q. Okay. If -- you have in front of you some notebooks. Do
21 you have in front of you Government's Exhibit Number 12?

22 A. On the screen?

23 Q. I don't know if is projecting to you.

24 A. Yes.

25 Q. 12A?

1 A. 12A.

2 Q. 12A. Because it's in English, correct?

3 A. (No response.)

4 Q. Government's Exhibit 12 is Spanish. Government's Exhibit
5 12A is in English.

6 And do you recognize this subcontract?

7 A. Yes.

8 Q. Did you have to review this in order to do your job?

9 A. Yes.

10 Q. What is it?

11 A. Yes, I had to --

12 Q. What is this? What is this --

13 A. Obviously this is the base contract or the index to your
14 contract, which gives the administration things, but it should
15 then give pointers to annexes in the contract.

16 Q. Okay. So let's go back just a second.

17 Is government's Exhibit 12 and 12A the contract
18 between F.G.G. and Mitsubishi to sell Mitsubishi's turbines to
19 F.G.G., so they could sell them to C.F.E.?

20 A. Well, I don't know about the afterwards, but, yes, there's
21 a contract between -- a subcontract with equipment supply only.

22 Q. Okay. Now, when you say "equipment supply only," why do
23 you say that?

24 A. Basically, we don't supply anything outside of what's in
25 our technical scope of supply with it. And also, you

1 normally -- there's a delivery point. This contract didn't have
2 that. So you go to what they call a termination called X-works
3 (phonetic); that somebody else has to pick it up, right, and
4 somebody else has to ship it.

5 Q. So, normally, you would deliver the turbines to Mexico, but
6 this contract didn't provide for that?

7 A. (No response.)

8 Q. And is that one of the reasons it's -- you didn't want to
9 call it a contract?

10 A. No.

11 Q. Oh, okay. Why didn't you want to call it a contract?

12 A. Well, in contracts, when we review, we have to have -- I
13 don't know how to put it -- a big stake, right, basic
14 termination, right, you know, so if said actions are not done or
15 add [sic] on country to contract, we can bring it in a bridge
16 and a termination of the contract.

17 This so contract, the one that was presented, did not
18 have any termination with it. It had, you know, go to
19 arbitration in Mexico City, I think it was, if I can remember.
20 But it didn't have a stake, so, you know, what can I do?

21 Q. Well -- so you said you have to basically put the contracts
22 into motion?

23 A. Yes.

24 Q. The paperwork. Let's call it the paperwork into motion.
25 And one of those agreements was Government's Exhibit 12A, which

1 is the English version of Government's Exhibit 12. Let me show
2 you Government's Exhibit 12, just so you can verify that it's
3 the Spanish.

4 By the way, do you have any idea why two United States
5 companies entered into a subcontract in Spanish?

6 A. Uh, (indiscernible), I don't know.

7 Q. No? Okay. But it -- I have in front of you, I'm
8 displaying to you Government's Exhibit 12, which is the Spanish
9 version. And do you --

10 You don't speak Spanish do you?

11 A. No.

12 Q. Okay? But you do generally recognize -- I'll put, for
13 example, page one, the declarations; do you recognize they have
14 the same numbering and headings that are similar to the one in
15 English?

16 A. Correct. We move admission of Government's Exhibit 12 and
17 12A, Your Honor.

18 THE COURT: Ms. Franco?

19 MS. FRANCO: No, objection, Your Honor.

20 THE COURT: GX-12 and 12A are admitted.

21 BY MS. KANOF:

22 Q. Okay. With regard to Government's Exhibit 12A -- we've put
23 the English version of that up -- it's called procurement of two
24 gas turbo generators and one turbo steam generator, site Agua
25 Prieta II, subcontract for the procurement of goods and annexes.

1 So this is -- is this the first document you've looked to --
2 well, before we talk about this document, once there was a
3 contract, do you have any input into the acceptance of that
4 contract?

5 A. Yes.

6 Q. Tell the jury about that?

7 A. Within our S.O.P., Standard Operating Procedures, there's a
8 turnover from sales and marketing commercial to projects, so
9 there has to be a turnover meeting, and then the sales and
10 marketing people have to tell us the problem areas, right, and
11 we go through it, and then we accept that contract as projects,
12 so we --

13 Q. Who is we, projects?

14 A. Projects accepted.

15 Q. So sales and marketing is John Adams and his people,
16 correct?

17 A. Yeah, and commercial. And commercial was not, you know, I
18 can't remember what Ueki-san, a Japanese, was the V.P. --

19 Q. U-E-K-I, correct?

20 A. That's correct, yeah.

21 Q. Ueki?

22 A. I could spell that one.

23 Q. And -san is just a title that you give somebody out of
24 respect, correct?

25 A. It's like we do "Mr.," it's "-san," right.

1 Q. So Mr. Ueki -- go ahead.

2 A. Was the V.P. of commercial. So he would be doing and his
3 team would be doing the commercial part of it and then we'd have
4 the legal team doing the legal part of it.

5 Q. Okay. So you have commercial, you have sales, you have
6 legal and you have projects; that is correct?

7 A. Yes.

8 Q. And they, once they have the contract, you have the option
9 to accept or decline the project; is that correct?

10 A. Yes.

11 Q. Okay. Why do you have all of that power?

12 A. Because once I -- I don't know, but I wrote the S.O.P., I
13 suppose.

14 Q. You gave yourself that power.

15 A. Basically, yes. We need a contract that's workable, right,
16 and we can administrate it, and what we received from this was
17 not anywhere near a contract.

18 Q. But initially you thought you could administrate this
19 contract?

20 A. No.

21 Q. No. But you accepted it?

22 A. No.

23 Q. What happened?

24 A. I come with this into February of 2010, with it, and the
25 contract was still not --

1 Q. Okay. Let's not jump ahead, because we're still in
2 November.

3 A. Oh, okay.

4 Q. And you've given an estimate, you hear that you got the
5 contracts, they turn it over to projects --

6 A. No, no, no. No.

7 Q. Okay.

8 A. The contract was not formulated then.

9 Q. We're talking about the contract between F.G.G. and C.F.E.?

10 A. No, no. Our contract. Our subcontract --

11 Q. I'm sorry. Go ahead. I'll let you talk.

12 A. -- our subcontract. This was not formulated to my
13 knowledge till December.

14 Q. Correct.

15 A. Right. Not in November. From November to December, the
16 commercial, the legal and the sales would have been talking with
17 the client to formulate the contract as such.

18 Q. Did you do a risk analysis to determine whether or not you
19 could implement the project?

20 A. I did, in February.

21 Q. Okay. And let me ask you who a few people are. Who is
22 Hector Ponce?

23 A. Hector Ponce used to be a senior V.P. for Mitsubishi and he
24 left, and he's brought back as a consultant.

25 Q. On this -- on the Agua Prieta II --

1 A. I'm not --

2 Q. Project?

3 A. He was involved in it, I don't know if he --

4 Q. You don't recall whether he was an employee or consultant?

5 A. No, he was a consultant.

6 Q. Okay. Who is Greg Wunder, W-U-N-D-E-R?

7 A. He was the V.P. --

8 Q. Sorry?

9 A. Was the V.P. of sales.

10 Q. The V.P. of?

11 A. Sales.

12 Q. Sales. Okay.

13 And so when you look at implementation, you look at
14 risk analysis, correct? What is risk analysis?

15 A. Basically what I go through is, again, I relook at all
16 aspects and all documentation, and this pages here are just an
17 outline. I've got to go into the technical specifications.

18 Q. If you look at the bottom of page one, you do in fact see
19 December 16th, correct?

20 A. Yes, I see that.

21 Q. And it doesn't say the year, but this was 2009, correct?

22 A. Yes.

23 Q. All right. And so you look at the financials; is that
24 right?

25 A. Yeah, I look at -- for the budget, because I got to deal

1 with the budgetary.

2 Q. Okay. And do you set a project schedule?

3 A. Normally, yes.

4 Q. And then what else do you do?

5 A. Then I start scheduling for checking on the drawings for
6 the project with it, and I double check on the technical
7 specification and to see what kind of clarifications are in that
8 technical specification.

9 Q. Now, Mitsubishi Power Systems Americas is owned by a
10 company in Japan, correct?

11 A. Yes.

12 Q. There's a parent company, correct?

13 A. Yes.

14 Q. And they're very -- are they very formal in the way they
15 set up projects?

16 A. Yes.

17 Q. Okay. And having worked both in Japan and in the United
18 States, you're familiar with the formalities that have to be put
19 in place; is that correct?

20 A. Correct.

21 Q. And did you begin to put some of these formalities in
22 place?

23 A. Yes.

24 Q. What are they?

25 A. Basically, I've got to get a communications group protocol,

1 uh, to set up --

2 Q. First there's a communications group protocol, what's that?

3 A. Basically official mail system, right. In Mitsubishi, we
4 have to -- every project gets a number, a unique number to that.
5 And then I would set a mail system, and at that time, it was
6 Lotus Notes for the project. I've also to get -- with that,
7 I've got to put in who is the approver for the official mail and
8 who does it go to on the other end. So basically, I've got to
9 get contact with the client to say, who do I send e-mails to,
10 the official ones, and in my own organization I've got to get,
11 first of all, from my side, I need a project engineer assigned
12 to it. And then I've got to do an approval thing for the
13 official mails, right.

14 So basically, even if I write that letter, right,
15 assuming advantage I'm not allowed just to send it, so it's got
16 to go through a chain of approvals, right, with this. So for
17 that project was Ueki-san, because he was a V.P. at the time,
18 would be on the approvals, and then the commercial person from
19 his would be on there. And then if there's a technical, my
20 project engineer would be on there as well.

21 Q. If it was a technical issue --

22 A. Yeah.

23 Q. -- there were certain people, if it was a financial issue
24 there were different people; is that correct?

25 A. Correct.

1 Q. Because you've reviewed the e-mails that you're going to
2 talk about, correct?

3 A. Yes.

4 Q. And some of them, they don't have -- they don't always sent
5 to the same people, and does this explain why they're sent to
6 who they're sent to?

7 A. The official mail system, right, for the project, does not
8 change; it goes to the person, right. The interoffice e-mails,
9 which is we talk like talking, if you like, it doesn't, that can
10 go to different people.

11 Q. Okay. So is Japan copied on all of the e-mails?

12 A. Basically, what we do, because this was a contract
13 initiated from the Americas and what -- any communication from
14 Japan, right, on the technical side or the commercial side,
15 because I issue P.O.s to them, they issue a number, a project
16 number to it, a correspondence number the same as I do, and that
17 goes into a vault, right.

18 Q. Once a project is initiated, you've set up the
19 communication protocols, do you have a special initiating
20 meeting?

21 A. Yes.

22 Q. What's it called?

23 A. It's called a kickoff meeting.

24 Q. A kickoff meeting. What's a kickoff meeting?

25 A. Basically, what we do is we have a kickoff meeting, not

1 only with the client, because normally the client is the end
2 user.

3 Q. Okay. So explain that.

4 A. The client we sell to say, I don't know, Excel Energy.
5 Excel Energy is going to operate that plant with it. So we have
6 a contract with them. There's not a third party in between,
7 right.

8 Q. How often do you have a third party like F.G.G. in between
9 you, the owner of the turbines and the end user?

10 A. This was the first time I've come across this. In my
11 opinion, I don't agree. It's unbelievable.

12 Q. And you've been in the industry how many years?

13 A. Years.

14 Q. How many, I'm sorry?

15 A. 4-0 years.

16 Q. 40 years.

17 Was there a kickoff meeting?

18 A. Eventually, yes.

19 Q. Okay. What do you mean by eventually?

20 A. I had kickoff meetings in Japan, because I had to discuss
21 with the factories for what slots were available, what the
22 project was, what we were doing with it, so they could give me a
23 detail estimate with it. And I kept asking for a kickoff
24 meeting.

25 Q. Who were you asking?

1 A. F.G.G. and our own people.

2 Q. Okay. So usually the kickoff meeting, who's present to the
3 kickoff meeting?

4 A. Usually, the client and engineers and everybody so we can
5 sit around, introduce ourselves, tell them who is who, right, so
6 we --

7 Q. Your engineers meet the engineers that are going to run it
8 once it's up and running?

9 A. No, for installing it and for what we have to do.

10 Q. Okay. Your engineers, who know about the equipment, have a
11 kickoff meeting with the engineers that are going to install it?

12 A. Correct.

13 Q. Okay. But now you have somebody in between in this case,
14 correct?

15 A. That was so.

16 Q. So did you have a kickoff meeting with C.F.E.?

17 A. Eventually, I think that was -- I think it was in April.
18 I'm not sure. It could've been March. But I think it was
19 April, 2009.

20 Q. Okay. Did you try to have it in a timely manner?

21 A. Yes, because I had a lot of information that I needed.

22 Q. Well, what did you need?

23 A. I needed deliveries.

24 Q. You needed to know when the delivery time was?

25 A. Schedules, et cetera, like that.

1 Q. Well, why didn't you just call the engineers and ask them?

2 A. Well, it's protocol, and I have to -- my contract to
3 initiate it was with F.G.G. not with C.F.E.

4 Q. So that takes us back to 12A. You say that you have to --
5 that you're responsible for the contracts; is that correct?

6 A. Correct.

7 Q. All right. So you have experience with facilitating the
8 contract; is that correct?

9 A. Correct.

10 Q. Looking at the first page, who is the purchaser?

11 A. F.G.G.

12 Q. Okay. And who is the sub-supplier?

13 A. That would be us.

14 Q. And it refers to something called the Teaming Agreement
15 that was entered into on August 8th of 2019. Do you know what
16 that was about?

17 A. It was an agreement, I think, by parties.

18 Q. It wasn't something that you needed in order to do your
19 job?

20 A. No.

21 Q. Okay. And what else in here is important to you?

22 A. Basically, from my point, I need to -- the drawings on the
23 technical specifications. The technical specification is my
24 Bible, if you like, because that tells us exactly what scope of
25 supply is needed. It also tells us what the engineers, right,

1 put in as clarifications, right, or the difference, right,
2 between these units for that project.

3 Q. Okay. Do you need to look at what the specifications
4 C.F.E. needed in order to see whether or not you can meet those
5 standards with your equipment?

6 A. I do not do that.

7 Q. You do not.

8 A. I don't.

9 Q. Who does that? Does anybody do that?

10 A. Basically, that would be engineering that would look at the
11 thing. In essence what I'm saying, when I get that, the
12 clarification document is there, so that's already being done
13 when I get that from administration.

14 Q. What else about this is important to you, Government's
15 Exhibit 12A?

16 A. Well, you said commercial. Then I have to find out the
17 payment schedule with it, so then I can look at it. I also have
18 to look at our performance guarantees, what we're supposed to
19 achieve, the power output and the heat grid coming from the
20 machine. And then I've got to look at what we call liquidated
21 damages associated, if we do not meet them guarantees. And the
22 guarantees can be both in deliverables, such as delivery of the
23 units, but also down to deliverable of drawings, right, with it.

24 So I have to look at all of that to do an overrule
25 schedule so Mitsubishi is not liable to any of these.

1 Q. I'm going to draw your attention to -- and these pages
2 are -- I apologize, not your fault or mine -- the pages aren't
3 numbered in this particular subcontract, but it would be the
4 next page down that's got in the middle of it the word
5 "clauses."

6 A. Correct.

7 Q. Is there any information on this page that is pertinent and
8 necessary to you?

9 A. Oh, yes.

10 Q. Okay.

11 A. Basically, the technical specifications for Mitsubishi
12 number 09070168MPS, is the gas turbine specification, gas
13 turbine.

14 Q. You are looking at the first bullet point --

15 A. Correct.

16 Q. -- that says technical specifications for Mitsubishi
17 number, and then it has a number, of gas turbo generator set
18 technical proposal specification, correct?

19 A. Correct.

20 Q. What does that mean to you?

21 A. That is the technical spec.

22 Q. Okay. And what is -- now, you started to explain what
23 technical spec was?

24 A. A technical spec is everything. It tells us each system,
25 what the gas turbine is, the technology, what temperatures the

1 gas has got to be, it puts the clarifications in there. It
2 describes all of the systems we have and how --

3 Q. So that number says all of that to you?

4 A. No. There's a document that goes with that number. So I
5 have got -- that is a specification number. I just call that up
6 and I get that specification.

7 Q. Okay. So that specification number goes with a document --

8 A. Yes.

9 Q. -- that has all of the technical information, information
10 you need to identify which gas turbine and what you need for the
11 project?

12 A. Yes, because this would be one of the annexes you see on
13 the contract. It says "the subcontract," and then it says
14 "annexes." Well, this would be one of the annexes. It's the
15 technical specs annex. And the second bullet point is the steam
16 turbine spec, which again would be an annex.

17 Q. So if you go above those two bullet points to the beginning
18 of the paragraph, you're the sub-supplier that -- by you, I
19 meant Mitsubishi, correct?

20 A. Yes.

21 Q. And it says, binds itself to provide the purchaser with the
22 goods that are described below; is that correct?

23 A. Correct.

24 Q. So Mitsubishi -- are you telling the jury that Mitsubishi
25 is binding themselves to the specifications that are found under

1 those numbers for the gas and steam generators?

2 A. Basically, yes.

3 Q. Okay. And nothing else?

4 A. It will be commercial things in there, nuances, but that is
5 the main crux of -- that is the project.

6 Q. Look at bullet point three: Attached clarifications titled
7 clarifications related to the subcontract. What's that?

8 A. That would be clarifications from the engineers, their
9 discussions as you said before, with a licitation of the bid
10 spec.

11 Q. Explain.

12 A. So, say the -- an intake system, you know, we need air into
13 the gas turbine, and with that one, the initial one was our
14 already manufactured equipment was a two-stage, just meaning
15 that it's two banks of filters, but apparently the licitation
16 said three-stage, right, with it. So there was that
17 clarification on that; this will be a two-stage.

18 Q. So in other words, they were asking for a three-stage and
19 you attached a clarification that said, okay, but ours is only a
20 two-stage?

21 A. I didn't.

22 Q. Well, not you personally, but Mitsubishi?

23 A. There would have been, and that's why I was saying, inside
24 that technical specification, right, the clarifications were
25 already embedded --

1 Q. Oh, okay.

2 A. -- right, in there as part of the technical specification,
3 so as long as I had that, I'm happy, right.

4 Q. Okay. In other words, the whole truth is out there?

5 A. Yes.

6 Q. All right. And scrolling down a little bit, these
7 specifications and clarifications represent the exclusive
8 statement of the scope of the sub-supplier for the purpose of
9 the subcontract. What does that mean to you?

10 A. It looks like the lawyers have got together.

11 Q. Oh, okay. Sorry. Not this lawyer, but okay.

12 A. Present company.

13 Q. Okay. Then it talks a little bit about the second and
14 third deliveries. Is this something that's important to you?

15 A. Yep.

16 Q. Well, tell the jury about that?

17 A. Well, the second one is a delivery location; where do I
18 have to deliver to, with it, because the equipment because it's
19 manufactured, and it's not just manufactured in our factories or
20 in a warehouse in France. There's vendors all around the world,
21 right. So I have to then check, right, with each of the
22 vendors, have we still got that there, with it, and find out
23 where it's going to be sent to, but again, as I said before,
24 with this contact, that was taken away, so it ended up as
25 x-works (phonetic).

1 Q. What do you mean it was taken away?

2 A. I was under the impression that the transportation in that
3 would come under a second phase. It would be a supply contract
4 and then a transport contract and then a technical support
5 contract and a training contract.

6 Q. Okay. And why were you under that impression?

7 A. Uh, John told me.

8 Q. Okay. And that didn't happen, correct?

9 A. No.

10 Q. The third is delivery time?

11 A. That is a big one for me, because what I have to do then
12 delivery time, what I have to do with refurbishment because I
13 don't want to do a refurbishment twice. So what I need to do is
14 try to time all of the refurbishment to coincide with the
15 delivery, right, with it, but also have it at least some time
16 period, grace period, where I can do inspections, and if I find
17 anything, I can fix it before it gets packaged and ready for
18 shipment.

19 Q. Okay. Is there anything else as I page down, the fourth,
20 the amount, is that important to you?

21 A. The amount? Not really.

22 Q. No?

23 A. Well, the only thing is I'm on commission.

24 Q. Somebody else decides how much they're going to sell them
25 for, right?

1 A. Yes.

2 Q. Okay. And the condition of the prices, you don't care
3 about that or the taxes, right?

4 A. Well, that does come into play if it's taxes on us, then it
5 comes under me, because I have to put a budget for taxes,
6 especially when it's going over the border, right, because
7 there's import taxes, customs clearances and all of this, which
8 I have to evaluate into my budget, right, for the project.

9 Q. Okay. So you have to have a budget and you have to include
10 import taxes and certain kinds of customs taxes and things like
11 that, correct?

12 A. If it's in our scope, but this got changed because it went
13 x-works and it never went there, right.

14 Q. And then it talks about the payments, the first payment,
15 the -- you are also responsible for the invoices, aren't you?

16 A. Correct, yes.

17 Q. Explain that.

18 A. Basically, I get from this which is the payment schedule,
19 With a payment schedule, it maps out when we can put an invoice
20 in, right, and then we send out the invoice to submit it, and
21 then there's a period of time when it comes in. And then what I
22 have to do is -- now, in modern days, it's all wired, so I have
23 to put all of the wire details on there, so I put everything on
24 that invoice.

25 Q. So somebody gives you the payment schedule.

1 A. It's supposed to be part of the contract.

2 Q. It's supposed to be part of the contract --

3 A. Yes.

4 Q. -- and again you are supposed to administer the contract,
5 correct?

6 A. Correct.

7 Q. And so you follow that payment schedule and you send the
8 invoices which include where the money is supposed to go to pay
9 you, correct?

10 A. Yes.

11 Q. It has the wiring instructions on it, correct?

12 A. Yes.

13 Q. Okay. And --

14 THE COURT: Ms. Kanof, it's 4:35.

15 MS. KANOF: Okay. Your Honor.

16 THE COURT: Is this a good time to break?

17 MS. KANOF: It is a good time.

18 THE COURT: All right.

19 Ladies and gentlemen of the jury, we're going to
20 recess for the evening. I ask you to be back in the jury room
21 at 9 o'clock tomorrow. Please remember the instructions I gave
22 you earlier about not discussing the case with any family
23 members or friends or even amongst yourselves, and with that,
24 we'll see you tomorrow at 9 o'clock. We're in recess till then.

25 Tomorrow we'll work till 6:00 as we will the rest of

1 the time for this trial.

2 THE COURT SECURITY OFFICER: All rise.

3 (Proceedings conclude for the day.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET
Kathleen A. Supnet, CSR

December 5, 2018
Date

KATHLEEN A. SUPNET, CSR